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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASHON BERNARD JOHNSON,

Defendant and Appellant.

E046210

(Super.Ct.No. FSB702212)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,  
Judge. Affirmed with directions.

William Flenniken, Jr., under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, and Rhonda Cartwright-  
Ladendorf, Kristen Kinnaird Chenelia, and Scott C. Taylor, Deputy Attorneys General,  
for Plaintiff and Respondent.

A jury convicted defendant and appellant Jashon Bernard Johnson of misdemeanor assault (Pen. Code, § 240, count 1),<sup>1</sup> assault by means of force likely to result in great bodily injury (§ 245, subd. (a)(1), count 2), and misdemeanor vandalism (§ 594, subd. (b)(2)(A), count 3). As to count 2, the jury also found true the allegations that defendant committed the crime in furtherance of a criminal street gang (§ 186.22, subd. (b)(1)(A)) and personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). The trial court sentenced him to a total term of nine years in state prison and awarded him 156 days of actual custody credits plus 22 days of conduct credit, for a total of 178 credits.

On appeal, defendant contends that: 1) there was insufficient evidence to support the allegation that he personally inflicted great bodily injury upon the victim in count 2; and 2) the court miscalculated his custody credits. The People concede, and we agree, that the court miscalculated the custody credits. Otherwise, we affirm.

### FACTUAL BACKGROUND<sup>2</sup>

On May 31, 2007, Jane Doe was at a movie theater with her neighbors, Oumunique Perault and her husband, Jermaine Russ, and Raymond High (the victim). The victim was Russ's nephew and had been introduced to Doe by Perault. Doe was sitting in the aisle seat next to the victim. She and the victim had fallen asleep during the movie.

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise noted.

<sup>2</sup> Because the only contested issue on appeal pertains to the conviction in count 2, we will focus on the facts regarding that count.

Defendant was the father of Doe's son, but he and Doe were no longer dating. Defendant entered the theater with two friends. He located Doe and shined the light from his cell phone over her head. Doe woke up, and defendant said something to her and struck her in the face multiple times with a closed fist. He then turned to the victim and punched him in the face multiple times. Defendant and his friends made comments to the victim, such as, "'That's Squad G's. What are you doing with my baby momma? What are you doing, Cuz? Get him outside. Let's go. Let's go. Where are you from?'" Defendant also said, "'I want you outside. We have things for niggers like you outside.'" Defendant's friends were trying to pull the victim outside. Russ stood up and grabbed the victim, and defendant and his friends left.

As a result of the incident, the entire right side of the victim's face was throbbing in pain, because half of one of his molars had chipped off. He could not eat on the right side of his mouth for two months. In addition, both of his eyes were red and swollen. His right eye was so swollen that he could not see out of it. The victim also had a quarter to half-inch laceration under his right eye that was bleeding.

### ANALYSIS

#### I. There Was Sufficient Evidence to Support the Great Bodily Injury Finding

Defendant was convicted of assault by means of force likely to produce great bodily injury against the victim in count 2. The jury found true the allegation that he inflicted great bodily injury. (§ 12022.7, subd. (a).) Defendant contends there was insufficient evidence to support the great bodily injury enhancement because "a single

chipped tooth alone” does not constitute great bodily injury. We reject defendant’s argument.

*A. Standard of Review*

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

*B. The Evidence Was Sufficient*

The court here instructed the jury that “[g]reat bodily injury means ‘significant or substantial physical injury.’ It is an injury that is greater than minor or moderate harm.” Defendant specifically argues that “no court has ever held in a reported opinion that a single chipped tooth alone constitutes great bodily injury.” He further asserts that no expert testified about the significance of the injury here, and without more evidence, “it can only be concluded that the jury speculated that [the victim’s] chipped tooth was something more than . . . a moderate injury.”

“The term ‘great bodily injury’ has been used in the law of California for over a century without further definition and the courts have consistently held that it is not a technical term that requires further elaboration. [Citations.]” (*People v. La Fargue*

(1983) 147 Cal.App.3d 878, 886-887.) The term has long been accepted as commonly understandable to jurors. (*Id.* at p. 887, fn. 5.) Furthermore, “[i]t is well settled that the determination of great bodily injury is essentially a question of fact, not of law.

“Whether the harm resulting to the victim . . . constitutes great bodily injury is a question of fact for the jury. [Citation.] If there is sufficient evidence to sustain the jury’s finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding.” [Citations.]” (*People v. Escobar* (1992) 3 Cal.4th 740, 750, fn. omitted.)

Defendant’s argument that a single chipped tooth is insufficient to establish great bodily injury completely ignores the additional injuries he inflicted upon the victim, as well as the severity of the chipped tooth. The victim did not merely chip a tooth. Rather, he lost half of a molar, which caused him severe pain. After the assault, the entire right side of his face was throbbing in pain. Moreover, he could not use the right side of his mouth to eat for two months. In addition, the victim sustained a laceration under his right eye that bled, and both of his eyes were red and swollen. His right eye was so swollen that he could not see out of it.

Viewing the evidence in a light favorable to the judgment, as we must, we conclude there was sufficient evidence to support the jury’s finding that the victim sustained injuries that were “greater than minor or moderate harm.”

## II. The Matter Should Be Remanded to Determine the Correct

### Number of Custody Credits

Defendant contends that remand is necessary to determine the correct number of presentence custody credits. The People concede.

Section 2900.5 provides, in relevant part: “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment . . . .”

The court here awarded defendant a total of 178 presentence custody credits, consisting of 22 conduct credits and 156 days of actual credit. The record shows that defendant was in custody on September 6, 2007 through September 18, 2007, and was released on bail some time after that. (The record reflects that he had been released on bail by October 22, 2007.) Defendant was remanded to custody on November 28, 2007, and apparently remained in custody until his sentencing on June 30, 2008. These dates indicate he was in custody at least 205 days, which is considerably more than the 156 days of actual time awarded by the trial court.

Since the record on appeal does not make clear the exact dates defendant was in custody, the matter should be remanded back to the trial court to determine the correct number of presentence custody credits.

DISPOSITION

The judgment is affirmed. However, the case is remanded to the trial court with instructions that the court reconsider the information before it, render a revised order correctly determining the number of days of custody credit to which defendant is entitled, and forward a copy of any revised order to the Department of Corrections and Rehabilitation.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MILLER

J.